

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO**

IN RE: GOLD KING MINE RELEASE IN)
SAN JUAN COUNTY, COLORADO, ON)
AUGUST 5, 2015)
This Document Relates to:) C.A. No. 1:18-md-02824-WJ
 No. 1:16-cv-00465-WJ-LF,)
 No. 1:16-cv-00931-WJ-LF)
 No. 18-cv-319-WJ)

**JUDGMENT OF DISMISSAL WITH PREJUDICE
OF ALLEN PLAINTIFFS' COMPLAINT AGAINST
DEFENDANT ENVIRONMENTAL RESTORATION, LLC**

On May 3, 2022, the Tenth Circuit Court of Appeals issued its Opinion (certified for publication) in Appellate Case No.19-2197 [Document 010110678995], reversing this Court's Memorandum Opinion and Order, filed on May 31, 2019 [Document 182], holding that the two-year Colorado statute of limitations applies to the tort claims of plaintiffs Joe C. Allen, *et al.* (collectively, "Allen Plaintiffs") alleged against defendant Environmental Restoration, LLC ("Defendant") in the above-referenced action, entitled *Joe C. Allen, Jr, et al. v. United States of America, et al.*, United States District Court, District of New Mexico, Case No. 1:18-cv-00744-WJ-KK. "Because we hold that a district court must apply the point source state's [Colorado's two-year] statute of limitations to state law claims preserved under the CWA [Clean Water Act], we remand to the district court for proceedings not inconsistent with this opinion. REVERSED AND REMANDED. [Opinion, p. 13.]"

On July 21, 2022, the Tenth Circuit issued its Mandate [Document 010110714201] to the Office of the Clerk of this Court, stating: "Pursuant to Federal Rule of Appellate Procedure 41, the Tenth Circuit's mandate in the above-referenced appeal issued today. The court's May 3, 2022 judgment takes effect this date. With the issuance of this letter, jurisdiction is transferred

back to the lower court/agency." Accordingly, on July 21, 2022, the Clerk of this Court filed a notice of "Mandate of USCA as to Notice of Interlocutory Appeal" [Document 1732], attaching the Tenth Circuit's Order, filed on June 1, 2022 [Document 010110691515], stating that "Appellees petition for rehearing is denied."

On July 22, 2022, Defendant Environmental Restoration, LLC ("ER") submitted its "[Proposed] Judgment of Dismissal With Prejudice of Allen Plaintiffs' Complaint Against Defendant Environmental Restoration, LLC" by email to the undersigned. *See* Doc. 1737. Counsel for ER also "served the Proposed Judgment electronically on all parties by email to all counsel of record, thereby triggering the start of the seven-day period to raise any objection pursuant to L.R. 58.2(a)(2)." Local Rule 58.2 provides:

An order or judgment reflecting the Court's decision and prepared by the prevailing party, submitted in accordance with the procedure set by the assigned Judge, will be entered if:

- (1) all parties approve the order;
- (2) a copy of the order or judgment served on each party is not objected to within seven (7) days of service; or
- (3) good cause is shown.

D.N.M.LR-Civ. 58.2(a). No objections were filed by the July 29, 2022, deadline. "[O]n Friday, July 29, 2022, counsel for the *Allen* Plaintiffs notified ER's counsel of the *Allen* Plaintiffs' approval as to the form of the proposed judgment lodged with the Court by ER on Friday, July 22, 2022." Doc. 1760, filed July 29, 2022.¹

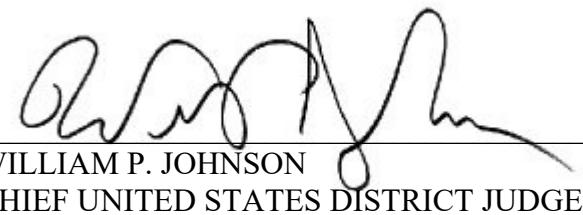
Accordingly, pursuant to Local Rule of Civil Procedure 58.2,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

¹ The Court added this paragraph to the proposed judgment for context.

1. The Complaint of *Allen* Plaintiffs against Defendant is dismissed with prejudice.
2. Defendant shall be awarded its recoverable costs pursuant to applicable law.

DATED: 8/4/2022



WILLIAM P. JOHNSON
CHIEF UNITED STATES DISTRICT JUDGE

DATED: July 22, 2022

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